



भारत का राजपत्र The Gazette of India

असाधारण

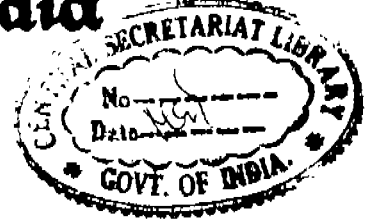
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 10] नई दिल्ली, सोमवार, जुलाई 15, 1996/आषाढ 24, 1918
No. 10] NEW DELHI, MONDAY, JULY 15, 1996/ASADHA 24, 1918

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The Following Bills were introduced in Lok Sabha on 15th July, 1996 :—

BILL No. 30 OF 1996

A Bill to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 1st day of March, 1996.

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work.

Short title,
extent,
commencement
and
application.

Explanation.—For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means,—

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;

14 of 1947.

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government.

Explanation.—For the purposes of sub-clause (ii), "public sector undertaking" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956, which is owned, controlled or managed by the Central Government;

1 of 1956.

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

(b) "beneficiary" means a building worker registered under section 12;

(c) "Board" means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of section 18;

(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply;

63 of 1948.
35 of 1952.

(e) "building worker" means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, in connection with any building or other construction work but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity;

or

(ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(f) "Chief Inspector" means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;

(g) "contractor" means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment; and includes a sub-contractor;

(h) "Director-General" means the Director-General of Inspection appointed under sub-section (1) of section 42;

(i) "employer", in relation to an establishment, means the owner thereof, and includes,—

(i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;

(ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;

(iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(j) "establishment" means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence;

(k) "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;

(l) "notification" means a notification published in the Official Gazette;

(m) "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(n) "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936.

4 of 1936.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II

THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

3. (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it.

Central
Advisory
Committee.

(2) The Central Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the Central Government;

(b) the Director-General—member, *ex officio*;

(c) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisory Committee shall be such as may be prescribed:

Provided that the members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

State Advisory
Committee.

4. (1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it.

(2) The State Advisory Committee shall consist of—

- (a) a Chairperson to be appointed by the State Government;
- (b) a member to be nominated by the Central Government;
- (c) the Chief Inspector—member, *ex officio*;

(d) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

Expert
committees.

5. (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Act.

(2) The members of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER III

REGISTRATION OF ESTABLISHMENTS

Appointment of
registering
officers.

6. The appropriate Government may, by order notified in the Official Gazette,—

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be the registering officers for the purposes of this Act; and

(b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.

7. (1) Every employer shall,—

Registration of establishments.

(a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and

(b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

8. If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact or that the provisions of this Act are not being complied with in relation to any work carried on by such establishment, or that for any other reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

Revocation of registration in certain cases.

9. (1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Appeal.

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

10. No employer of an establishment to which this Act applies shall,—

Effect of non-registration.

(a) in the case of an establishment required to be registered under section 7, but which has not been registered under that section;

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed,

employ building workers in the establishment after the expiry of the period preferred to in clause (a) or clause (b) of sub-section (1) of section 7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

CHAPTER IV

REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

Beneficiaries of
the Fund.

11. Subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

Registration of
building
workers as
beneficiaries.

12. (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

Identity cards.

13. (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

Cessation as a
beneficiary.

14. (1) A building worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty years or when he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.—For computing the period of five years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

15. Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.

Register of
beneficiaries.

16. (1) A building worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Contribution of
building
workers.

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

17. When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Effect of non-
payment of
contribution.

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

CHAPTER V

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE BOARDS

18. (1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the (name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Act.

Constitution of
State Welfare
Boards.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

Secretary and
other officers of
Boards.

19. (1) The Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The Secretary of the Board shall be its chief executive officer.

(3) The terms and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

Meetings of
Boards.

20. (1) The Board shall meet at such time and place and observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting, and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting vote.

Vacancies, etc.,
not to
invalidate
proceedings of
the Boards.

21. No act or proceedings of a Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

Functions of
the Boards.

22. (1) The Board may—

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;

(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed,

whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

23. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to a Board grants and loans of such sums of money as the Government may consider necessary.

Grants and loans by the Central Government.

24. (1) There shall be constituted by a Board a fund to be called the Building and Other Construction Workers' Welfare Fund and there shall be credited thereto—

Building and Other Construction Workers' Welfare Fund and its application.

(a) any grants and loans made to the Board by the Central Government under section 23;

(b) all contributions made by the beneficiaries;

(c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting—

(a) expenses of the Board in the discharge of its functions under section 22; and

(b) salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(c) expenses on objects and for purposes authorised by this Act.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent. of its total expenses during that financial year.

25. The Board shall prepare, in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

1. Bget.

26. The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

Annual report.

27. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have

the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Act.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

(5) The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

CHAPTER VI

HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

Fixing hours
for normal
working day,
etc.

28. (1) The appropriate Government may, by rules,—

(a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely:—

(a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

(c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) persons engaged in a work which could not be carried on except at times dependant on the irregular action of natural forces.

Wages for
overtime work.

29. (1) Where any building worker is required to work on any day in excess of the number of hours constituting a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, "ordinary rates of wages" means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

30. (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

Maintenance of registers and records.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

(3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

31. No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

Prohibition of employment of certain persons in certain building or other construction work.

32. (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

Drinking water.

(2) All such points shall be legibly marked "Drinking Water" in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Latrines and urinals.

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

34. (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

Accommodation.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purposes of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

Creches.

35. (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall—

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition;
- (d) be under the charge of women trained in the care of children and infants.

First-aid.

36. Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

Canteens, etc.

37. The appropriate Government may, by rules, require the employer—

- (a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers;
- (b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER VII

SAFETY AND HEALTH MEASURES

Safety
Committee and
safety officers.

38. (1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

Notice of
certain
accidents.

39. (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Where a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

Power of
appropriate
Government to
make rules for
the safety and
health of
building
workers.

40. (1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;

(b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;

(c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;

(d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;

(e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;

(f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears are in progress and of all openings dangerous to building workers employed;

(g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;

(h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;

(i) the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;

(j) the safe handling and use of plant, including tools and equipment operated by compressed air;

(k) the precautions to be taken in case of fire;

(l) the limits of weight to be lifted or moved by workers;

(m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;

(n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;

(o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;

(p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments;

(q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handling materials;

(r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;

(s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986, regarding the use of any article or process covered under that Act in a building or other construction work;

63 of 1986.

(t) the provision and maintenance of medical facilities for building workers;

(u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

Framing of
model rules for
safety
measures.

41. The Central Government may, after considering the recommendation of the expert committee constituted under section 5, frame model rules in respect of all or any of the matters specified in section 40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section 40, so far as is practicable, conform to such model rules.

CHAPTER VIII

INSPECTING STAFF

Appointment of
Director-
General, Chief
Inspector and
Inspectors.

42. (1) The Central Government may, by notification, appoint a Gazetted Officer of that Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Act in the State and shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector, as the case may be, and shall exercise his powers and perform his functions under this Act subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Powers of
Inspectors.

43. (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act, and require the production thereof for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a building worker employed therein;

(c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;

(d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director-General or the Chief Inspector, as the case may be, may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

45 of 1860. (3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

2 of 1974. (4) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

CHAPTER IX

SPECIAL PROVISIONS

44. An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Act relating to safety and for taking all practical steps necessary to prevent accidents.

Responsibility of employer.

45. (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed:

Responsibility for payment of wages and compensation.

8 of 1923. (2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923, and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

46. (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing—

Notice of commencement of building or other construction work.

(a) the name and situation of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including any plant and machinery, provided;

(e) the arrangements for the storage of explosives, if any, to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work at the site;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section (1), the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate Government may by notification specify to be emergent works.

CHAPTER X

PENALTIES AND PROCEDURE

Penalty for
contravention
of provisions
regarding
safety
measures.

47. (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:

Provided that for the purposes of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

Penalty for
failure to give
notice of the
commencement
of the building
or other
construction
work.

48. Where an employer fails to give notice of the commencement of the building or other construction work under section 46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Penalty for
obstructions.

49. (1) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in

relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

50. (1) Whoever contravenes any other provision of this Act or any rules made thereunder or who fails to comply with any provision of this Act or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such contravention or failure continues after the conviction for the first such contravention or failure.

Penalty for
other offences.

(2) A penalty under sub-section (1) may be imposed—

(a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and

(b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.

(3) No penalty shall be imposed unless the person concerned is given a notice in writing—

(a) informing him of the grounds on which it is proposed to impose a penalty; and

(b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and, if he so desires, of being heard in the matter.

(4) Without prejudice to any other provision contained in this Act, the Director-General and the Chief Inspector shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while exercising any powers under this section, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

Appeal.

51. Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal—

(a) where the penalty has been imposed by the Director-General, to the Central Government;

(b) where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government or the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary, pass such order as it thinks fit confirming, modifying or reversing the order appealed against or may send back the case with such directions as it may think fit for a fresh decision.

Recovery of penalty.

52. Where any penalty imposed on any person under section 50 is not paid,—

(i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or

(ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or

(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii), the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

Offences by companies.

53. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

54. (1) No court shall take cognizance of any offence punishable under this Act except on a complaint—

Cognizance of offences.

(a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or

21 of 1860.

(b) made by an office-bearer of a voluntary organisation registered under the Societies Registration Act, 1860; or

16 of 1926.

(c) made by an office-bearer of any concerned trade union registered under the Trade Unions Act, 1926.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

55. No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office-bearer of a voluntary organisation or, as the case may be, an office-bearer of any concerned trade union.

Limitation of prosecutions.

CHAPTER XI

MISCELLANEOUS

56. A Board may, by general or special order, delegate to the Chairperson or any other member or to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

Delegation of powers.

57. Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

Returns.

58. The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Act applies had been included in the Second Schedule to that Act.

Application of Act 8 of 1923 to building workers.

59. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

Protection of action taken in good faith.

(2) No prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Act or any member of such Board or any officer or employee of the Government or the Board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or issued thereunder.

60. The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provisions of this Act.

Power of Central Government to give directions.

61. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

62. (1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 3 or, as the case may be, under sub-section (3) of section 4;

(b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;

(c) the form of application for the registration of an establishment, the levy of fees therefor and the particulars it may contain under sub-section (2) of section 7;

(d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;

(e) the form in which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;

(f) the form in which an application for registration as a beneficiary shall be made under sub-section (2) of section 12;

(g) the document and the fee which shall accompany the application under sub-section (3) of section 12;

(h) the registers which the Secretary of the Board shall cause to be maintained under sub-section (6) of section 12;

(i) the benefits which may be given under sub-section (2) of section 14;

(j) the form in which register of beneficiaries shall be maintained under section 15;

(k) the terms and conditions of appointment, the salaries and other allowances payable to, and the manner of filling of casual vacancies of, the Chairperson and other members of the Board under sub-section (4) of section 18;

(l) the terms and conditions of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;

(m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;

(n) the amount payable as house building loans or advances, the terms and conditions of such payment under clause (c), educational assistance under clause (e), medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h), of sub-section (1) of section 22;

(o) the limits of grants-in-aid payable to the local authorities and employers under clause (b) of sub-section (3) of section 22;

(p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;

(q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;

(r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (4), of section 27;

(s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;

(t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;

(u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;

(v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;

(w) the types of latrines and urinals required to be provided under section 33;

(x) the first-aid facilities which are to be provided under section 36;

(y) the canteen facilities which are to be provided under clause (a) of section 37;

(z) the welfare measures which are to be provided under clause (b) of section 37;

(za) the number of representatives of the employer and the building workers under sub-section (1) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;

(zb) the form of a notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;

(zc) the rules to be made for the safety and health of building workers under section 40;

(zd) the powers that may be exercised by an Inspector under clause (e) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and conditions on which such experts or agencies may be employed;

(ze) the date on or before which wages shall be paid to a building worker under section 45;

(zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46;

(zg) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or

both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

Repeal and
saving.

63. (1) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996, is hereby repealed.

Ord.
25 of 1996.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.

2. Although the provisions of certain Central Acts are applicable to the building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service. The State Governments and Union Territory Administrations have been consulted in the matter and a majority of them have favoured such a legislation. Also, in a meeting of the Committee of State Labour Ministers constituted pursuant to the decision of the 41st Labour ministers Conference held under the chairmanship of the then Union Labour Minister on the 18th May, 1995, a general consensus had emerged on the need for the proposed Central legislation.

3. In view of the circumstances explained above, it has been considered necessary to constitute Welfare Boards in every State so as to provide and monitor social security schemes and welfare measures for the benefit of building and other construction workers. For the said purpose, it has been considered appropriate to bring in a comprehensive legislation by suitably amplifying the provisions of the Building and Other Construction Worker (Regulation of Employment and Conditions of Service) bill, 1988 which was introduced in the Rajya Sabha on the 5th December, 1988. It has also been considered necessary to levy a cess on the cost of construction incurred by the employers on the building and other construction works for ensuring sufficient funds for the Welfare Boards to undertake the social security schemes and welfare measures.

4. As Parliament was not in session and in view of the urgency felt by the Government for meeting the longstanding demand for the aforesaid legislation, the President was pleased to promulgate the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995) along with another Ordinance for the levy of a cess on the 3rd November, 1995.

5. A Bill, namely, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1995 was introduced in Lok Sabha on the 1st December, 1995 to replace the aforesaid Ordinance by an Act of Parliament. Since the said Bill could not be taken up for consideration in the Winter Session, 1995 and the Budget Session, 1996 of Lok Sabha, fresh Ordinances, namely, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1996 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, 1996 (Ord. 15 of 1996) respectively were promulgated on the 5th January, 1996 and the 27th March, 1996 with a view to provide continued effect to the legislative protection. With the dissolution of the 10th Lok Sabha, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1995 has lapsed. By virtue of Article 123 (2) (a) of the Constitution, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Second Ordinance, promulgated on 27th March, 1996 would have also ceased to operate with effect from 4th July, 1996. In view of the urgency attaching to the matter and as Parliament was not in Session, the President was pleased to promulgate the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996), on 20th June, 1996 in order to give continued effect to the legislative protection envisaged in the said ordinance.

6. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 *inter alia*, provides for the following matters, namely:—

(i) provision to cover every establishment which employs or had employed on any day of the preceding twelve months, fifty or more workers in any building or other construction work;

(ii) define 'appropriate Government' in respect of various establishments and also to enable the Central Government to notify and public sector undertaking in respect of which the Central Government will be the appropriate Government;

(iii) constitution of Central and State Advisory Committee to advise the appropriate Government on matters arising out of administration of the said Ordinance;

(iv) constitution of Expert Committee to advise on matters relating to framing of rules by the appropriate Government;

(v) registration of establishments employment construction workers, and appointment of registering officers;

(vi) registration of building workers as beneficiaries under the said Ordinance and provision for their identity cards, etc.;

(vii) constitution of Welfare Boards by the State Governments and registration of beneficiaries under the Fund;

(viii) provide for financing and augmenting resources of the Welfare Board constituted by the State Governments;

(ix) fixing hours for normal working day, weekly paid rest day, wages for over time, provision of basic welfare amenities like drinking water, latrines and urinals, creches, first aid, canteens, etc., for the building workers;

(x) provision for temporary living accommodation to all building workers within or near the work site;

(xi) making adequate provisions for safety and health measures for construction workers including appointment of safety committees and safety officers and compulsory notification of accidents;

(xii) empowering the Central Government to frame model rules for safety measures headed by Director-General of inspection at the Central level and Inspector-General at the State level;

(xiii) provision for appointment of inspecting staff including Director-General of Inspection at the Central level and Inspector-General at the State level;

(xiv) special provisions regarding fixing responsibility of employers to ensure compliance with safety provisions, and with regard to prevention of accidents, timely payment of wages, etc.;

(xv) provision for penalties for contravention, obstructions, violation and offence; taking cognizance by court of offence punishable under this Bill; and protection of action taken in good faith;

(xvi) application of the Workmen's Compensation Act, 1923 to building and other construction workers; and

(xvii) empowering the Central Government to give directions to the States and to remove difficulties arising in giving effect to the provisions of the said Ordinance.

7. The Bill seeks to replace the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996.

Notes on clauses

Clause 1 deals with the short title, extent, commencement and application of the legislation. The Central Government may, by notification, appoint the dates of its coming into force of the legislation and different dates may be appointed for different States. This is necessary as the conditions prevailing in all the States may not be uniform and the administrative machinery is to be set up. Sub-clause (4) of this clause provides that the legislation would apply to every establishment which employs or had employed on any day during the preceding twelve months, fifty or more workers in any building or other construction work. The number of building and construction workers in an establishment has been fixed at fifty for the purpose of coverage under the proposed legislation on grounds of practicability because it may not be possible to cover a large number of very small establishments employing only a few workers for a short period for doing small and petty construction, demolition or repair work.

Clause 2 seeks to define certain words and expressions used in the Bill. According to sub-clause (a) which defines "appropriate Government", the Central Government is the appropriate Government in relation to an establishment employing building workers in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government. This clause also enables the Central Government to specify, by notification in the Official Gazette, any public sector undertaking which is owned, controlled or managed by the Central Government in respect of which the appropriate Government will be the Central Government. In respect of the remaining establishments, the State Government shall be the appropriate Government. Sub-clause (d) defines "building and other construction work" to cover all conceivable kinds of building or other construction works for the purpose of coverage under the proposed legislation. Sub-clause (e) similarly defines "building worker" in very broad terms to include skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical workers in connection with any building or other construction work but excluding persons who are employed mainly in managerial or administrative capacity, or supervisors drawing wages exceeding Rs. 1600 per mensem.

Clause 3 empowers the Central Government to constitute a tripartite Central Advisory Committee consisting of not less than nine and not more than thirteen members excluding the Chairman and the *ex officio* member to advise the Central Government on such matters arising out of the administration of the proposed legislation as may be referred to it.

Clause 4 empowers the State Governments to set up State Advisory Committee consisting of not less than seven and not more than eleven members excluding the Chairman, a member nominated by the Central Government and the *ex officio* member. A representative of the Central Government has been included as a member of every State Advisory Committee because construction works undertaken by the Central Government and Central public sector undertakings in the State are likely to be the major employers of construction workers in the State as well as major contributors to the Welfare Fund to be constituted at the State level.

Clause 5 provides for the constitution of one or more expert committees by the appropriate Government. The Committee shall consist of such persons specially qualified in building and other construction works for advising the concerned Government in making rules under the proposed legislation.

Clause 6 empowers the appropriate Government to appoint gazetted officers of Government to be the registering officers for the purposes of registration of establishments under the proposed legislation.

Clause 7 lays down the procedure for registration of establishments.

Clause 8 provides for revocation of registration of establishments in case of registration by misrepresentation or suppression of material facts or for any non-compliance of the provisions of the legislation in relation to any work carried on by the registered establishments.

Clause 9 provides for appeal against the orders made under clause 8.

Clause 10 prescribes the effect of non-registration of establishments requiring registration under the legislation and not registered or the registration of which have been revoked under clause 8 and where no appeal has been preferred within the prescribed time under clause 9 or where the appeal has been preferred but the same has been dismissed. The provision bars employing of building workers by such establishment without a valid registration.

Clause 11 provides that every building worker registered as a beneficiary under the legislation shall be entitled to the benefits provided by the State Welfare Board from its Fund.

Clause 12 prescribes that every building worker between eighteen and sixty years of age who has been engaged in building and other construction work for not less than ninety days in the preceding twelve months shall be eligible to apply to an officer authorised by the Board to register as a beneficiary under the legislation. The said clause also lays down the detailed procedure for registration of a building worker as a beneficiary. It also provides for preferring of an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and also for maintenance of certain registers by the Secretary of the Board.

Clause 13 provides for issue of photographed identity card to every building worker registered as a beneficiary under the legislation.

Clause 14 provides that a beneficiary shall cease to be a contributing beneficiary on attaining the age of sixty years or when he was not engaged in building and other construction work for not less than ninety days in a year. Sub-clause (2) of the said clause provides that if a beneficiary had contributed for at least five years continuously immediately before attaining the age of sixty years, he will be eligible to get such benefits as may be prescribed by rules.

Clause 15 provides for maintenance of a register by employers in respect of the beneficiaries employed by them.

Clause 16 prescribes that a building worker registered as a beneficiary under the legislation shall, till he attains the age of sixty years, make a contribution to the fund at such rates as may be specified by the State Government concerned. The said provision also enables the State Government to specify different rates of contributions to be made by different classes of building workers.

Clause 17 provides that a beneficiary who has not contributed for a continuous period of more than one year shall cease to be a beneficiary, unless his registration as a beneficiary is permitted to be renewed by the Secretary of the Board on payment of arrears of his contribution.

Clause 18 provides that every State Government shall constitute a Board. Sub-clause (2) of the said clause provides that the Board shall be a body corporate with perpetual succession and a common seal, etc. Sub-clause (3) provides that the Board shall consist of a Chairperson and such number of other members not exceeding fifteen as may be appointed to it by the State Government. However, the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman. Sub-clause (4) provides for fixation of the terms and conditions of appointment, salaries and other allowances, filling of casual vacancies of the members of the Board, etc., as per the rules to be made by the appropriate Government (State Government).

Clause 19 provides that every Board shall have a Secretary and such other officers and employees as the Board may consider necessary for the efficient discharge of its functions. Sub-clause (2) provides that the Secretary of the Board shall be its Chief Executive Officer. Sub-clause (3) provides that the terms and conditions of appointment and the salaries and allowances payable to the Secretary and other officers and employees of the Board shall be such as may be prescribed by rules.

Clause 20 lays down the procedure relating to meetings of the Board.

Clause 21 provides that the existence of any vacancy, defect in its constitution, defect in appointment of any person as a member of it or any irregularity of procedure of it without affecting the merits of the case shall not invalidate the proceedings of the Board.

Clause 22 enumerates the functions of the Board. The Board will be making disbursement to the beneficiaries as per the provisions of the legislation and the rules made thereunder. The Board will also be competent to grant loans and subsidies to local authorities and employers executing welfare schemes approved by the State Government.

Clause 23 provides that the Central Government may after due appropriation made by Parliament by law in this behalf, make grants and loans to the Board.

Sub-clause (1) of Clause 24 provides that every Board shall constitute a fund to be called the Building and Other Construction Workers Welfare Fund with the sums received as loans and grants from the Central Government contributions made by the beneficiaries and all other sums received by the Board from such other sources as the Central Government may determine. *Sub-clause (2) of the said clause* provides that the fund shall be applied by the Board for its expenses in the discharge of its functions and for payment of salaries, allowances and other remuneration of the members, officers and other employees of the Board and for meeting other expenses for carrying out the objects of the legislation.

Clause 25 makes it obligatory for every Board to prepare its budget.

Clause 26 provides for the annual budget of every Board.

Clause 27 prescribes for maintenance of the proper accounts and other relevant records by every Board and preparation of an annual statement of accounts in such form as may be prescribed by rules in consultation with the Comptroller and Auditor General of India and compulsory audit by the Comptroller and Auditor General of India or any other person appointed by him. It also provides for laying of the audit report and the annual report of every Board before the concerned State Legislature.

Clause 28 empowers the appropriate Government to lay down normal working hours and to provide for a weekly paid rest day for the building workers.

Clause 29 prescribes wages for overtime work at twice the ordinary rate of wages.

Clause 30 prescribes for maintenance of various registers and records by the employers.

Clause 31 prohibits employment of workers suffering from specified disabilities in hazardous operations.

Clause 32 provides for supply of wholesome drinking water to the building workers at the work site.

Clause 33 provides for making sufficient arrangements of latrines and urinals for building workers.

Clause 34 provides that every employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him so long as the construction work is in progress. It also cast a duty on the building worker to remove these temporary structures and restore possession of the place used for construction of the temporary accommodation back to the owner or the municipal or other local authority, as the case may be.

Clause 35 provides that in case of a place where more than fifty female building workers are ordinarily employed it should be necessary for the employer to make adequate arrangements for creches for the children and infants of the women under the care of trained women.

Clause 36 provides for maintenance of first-aid facility at the work site.

Clause 37 provides for making adequate provisions for canteens and other welfare measures in case of work places where not less than 250 building workers are ordinarily employed.

Clause 38 provides for constitution of a bipartite Safety Committee in every establishment ordinarily employing five hundred or more building workers and appointment of a Safety Officer with prescribed qualifications.

Clause 39 provides for compulsory notice of accident involving injury to workers which incapacitates him for 48 hours for more immediately following the accident to the prescribed authority and for investigation and enquiry by the prescribed authority including compulsory enquiry within one month of the receipt of notice of serious accidents causing death of five or more persons.

Clause 40 empowers the appropriate Government to make rules concerning safety and health of building workers.

Clause 41 empowers the Central Government to make model rules after considering the recommendations of the expert committee constituted under clause 5. It also prescribes that the rules made by the State Governments under clause 40 shall, so far as practicable, conform to such model rules.

Clause 42 empowers the Central Government and the State Governments to appoint, by notification, Director-General of Inspection and Chief Inspector of Inspection respectively. The appropriate Government may also appoint their officers as inspectors under the legislation.

Clause 43 lays down the powers of inspectors under the legislation including the power of search and seizure and for production of documents.

Clauses 44 and 45 cast a responsibility on the employers to ensure compliance of the provisions relating to safety, taking all practical steps necessary to prevent accidents, and timely payment of wages to workers regularly. In the case of failure of contractors to pay due compensation in the case of death or disablement of building workers under the Workmen's Compensation Act, 1923, sub-clause (2) of clause 45 requires the employer to make full payment of compensation or unpaid balance thereof and recover the amount so paid from the contractor either by deduction from any dues payable to him or as a debt.

Clause 46 prescribes a notice of thirty days employer of the commencement of work together with necessary details as prescribed therein to the inspector.

Clauses 47 to 50 prescribe various penalties which may be imposed for contravention of various provisions of the legislation and provide for enhanced penalty in certain cases of Commission of offences for a second or subsequent time and compounding of certain minor offences by the Director-General and Chief Inspector of Inspection.

Clause 51 provides for procedure of appeal procedure against the penalties imposed by the Director-General in Inspection and Chief Inspector of Inspection and the procedure for preferring such appeal.

Clause 52 prescribes the procedure for recovery of penalty imposed under clause 50.

Clause 53 prescribes the procedure for imposition of penalty in case of offences by companies.

Clause 54 provides for cognizance of offences only on complaint by the Director-General, Chief Inspector of Inspection, an office bearer of a registered voluntary organisation or trade union, and its trial by a Metropolitan Magistrate or a Judicial Magistrate of the first class.

Clause 55 prescribes the period of limitations for prosecution as three months from the date of knowledge of Commission of offence by the complainant.

Clause 56 provides for delegation of powers to Chairperson, Secretary, member or other officers or employees of the Board by the Board subject to the conditions and limitations imposed by it.

Clause 57 requires every Board to submit the requisite returns to the Central and the State Governments.

Clause 58 extends the provisions of the Workmens' Compensation Act, 1923 to building workers.

Clause 59 provides for protection of action taken in good faith.

Clause 60 empowers the Central Government to give direction to the State Government or to the Board to implement any of the provisions of the legislation.

Clause 61 empowers the Central Government to remove difficulties in giving effect to the provisions of the legislation in a State within two years from the date of its commencement in that State by order published in the Official Gazette. Sub-clause (2) of the said clause provides that every such order has to be laid before each House of Parliament as soon as possible.

Clause 62 empowers the appropriate Government to make rules for carrying out the provisions of the legislation. Sub-clauses (3) and (4) of the said clause provides that every rule made by the appropriate Government is to be laid before the concerned Legislature as soon as may be.

Clause 63 provides for repealing of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord. 25 of 1996) and to save the action taken or things done under that Ordinance.

FINANCIAL MEMORANDUM

In accordance with the scheme of the Bill, the Central Government will be the appropriate Government in relation to certain establishments carrying out the building and other construction works. There are certain provisions in the Bill, in particular, sub-clause (1) of clause 3 regarding constitution of a Central Advisory Committee and sub-clause (1) of clause 5 regarding constitution of Expert Committees which may involve some expenditure from the Consolidated Fund of India. However, it is not proposed to have a separate administrative machinery at the Central level to enforce the various provisions of the Bill including those relating to conduct of inspections. It is proposed to utilise the services of the officers of the existing administrative machinery constituted within the Ministry of Labour for the enforcement of other labour laws in force for performing the duties of the various statutory authorities like Director-General of Inspection to be appointed under sub-clause (3) of clause 42. However, some expenditure is likely to be incurred in respect of payment of fees and allowances to the non-officials nominated on Boards, Committees, etc. At this stage it is not possible to make an accurate estimate of the amounts which may be required for payment of the said fees and allowances. However, it is estimated that the expenditure would not exceed ten lakh rupees per annum.

2. Sub-clause (1) of clause 18 of the Bill provides for constitution of State Building and other Construction Workers' Welfare Board in every State by the concerned State Government. Sub-clause (3) of the said clause 18 provides that every Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding 15, as may be appointed to it by the concerned State Government. Sub-clause (4) of the said clause *inter alia* provides that the terms and conditions of appointment and the salaries and other allowances payable to the Chairperson and other members of the Board shall be such as may be prescribed by rules. Sub-clause (1) of clause 19 of the Bill provides that the Board shall appoint a Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under the proposed legislation.

3. It is not possible at this stage to indicate the expenditure, recurring or non-recurring, as would be involved in meeting the expenses of the State Welfare Boards as it would depend upon their financial resources. The Boards will meet their own expenditure from their own fund and any payment made to the Board by the Central Government after due appropriation made by Parliament by law in that behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 28 of the Bill empowers the appropriate Government to make rules for fixing hours for normal working day for a building worker, a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration to them.

2. Clause 40 of the Bill empowers the appropriate Government to make rules for the safety and health of building workers. Sub-clause (2) of that clause specifies the matters in respect of which rules may be made under this clause. These include, among other things, the safe means of access to, and the safety of, any working place, the precautions to be taken in connection with the demolition of a building or other structure, the handling or use of explosives, the erection, installation, use and maintenance of transport equipment and lifting appliances, lighting of every working place, precautions to be taken to prevent inhalation of dust, etc., the precautions to be taken in case of fire, the steps to be taken to prevent danger to workers from live electric wires or apparatus, etc., the safety policy relating to the steps to be taken to ensure the safety and health of the building workers, the provisions and maintenance of medical facilities and other matters concerning the safety and health of building workers. Clause 41 of the Bill provides for framing of model rules by the Central Government for the safety measures referred to in clause 40. Clause 41 also provides that the appropriate Government shall, while making any rules in respect of any matter under clause 40, so far as is practicable, conform to such model rules.

3. Clause 62 of the Bill empowers the appropriate Government to make, after consultation with the expert committee constituted under clause 5 of the Bill, wherever it considers necessary, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause specifies the matters in respect of which rules may be made under clause 62. These include, among other things, the appointment, etc., of members representing various interests on the Central and State Advisory Committees, the various types of forms to be prescribed of applications, certificates, registers, etc., under various provisions of the Bill, latrines and urinals, accommodation, creches, first-aid facilities, canteen facilities and welfare measures for building workers, qualifications of safety officers, powers to be exercised by an Inspector, conditions of service of the experts and agencies to be employed and the period within which wages shall be paid to building workers.

4. The matters with respect to which the said rules may be made are matters of procedure or administrative detail and it may not be possible to provide for them in the Bill itself. The provisions have also been made for laying of such rules before Parliament or the State Legislature, as the case may be.

5. In view of the nature of legislation involved, clause 61 empowers the Central Government to remove, by order, any difficulty which may arise in giving effect to the provisions of the proposed legislation. This is by way of abundant caution and for covering difficulty which it is not practicable to visualise. It has, however, been provided that no such order shall be made in relation to any State after the expiry of two years from the day of commencement of the Act in that State. It has also been provided that a copy of every such order made shall be laid before Parliament.

6. In the context of the circumstances as explained above, the delegation of legislative power involved is of a normal character.

*Memorandum explaining the modifications contained in the Bill
to replace the Building and Other Construction Workers
(Regulation of Employment and Conditions of Service)
Third Ordinance, 1996*

Minor modifications of a drafting nature have been made in proviso to sub-clause (1) of clause 61 to put it in conformity with sub-clause (3) of clause 1.

Bill No. 22 of 1996

A Bill to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Building and Other Construction Workers' Welfare Cess Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Board" means a Building and Other Construction Workers' Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;

(b) "Fund" means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(c) "prescribed" means prescribed by rules made under this Act;

(d) words and expressions used herein but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 shall have the meanings respectively assigned to them in that Act.

3. (1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding one per cent. of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

Levy and collection of cess.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess levied under sub-section (1) shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Boards from time to time out of such proceeds such sum of money as it may think fit for being utilised for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and to the State Governments such sum of money, not exceeding one per cent. of the amount collected, towards the cost of collection of such cess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.

4. (1) Every employer shall furnish such return, to such officer or authority, in such manner and at such time as may be prescribed.

Furnishing of returns.

(2) If any person carrying on the building or other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1), the officer or the authority shall give a notice requiring such person to furnish such return before such date as may be specified in the notice.

5. (1) The officer or authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

Assessment of cess.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Notwithstanding anything contained in this Act, if the Central Government is satisfied that it is necessary or expedient so to do in the public interest, it may, by notification in the Official Gazette and subject to such conditions, if any, as may be specified therein, exempt any employer or class of employers from the payment of the cess payable under this Act for such building or other construction work as may be specified in such notification.

Power to exempt.

Power of entry.

7. Any officer or authority of the State Government specially empowered in this behalf by that Government may—

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for carrying out the purposes of this Act including verification of the correctness of any particulars furnished by any employer under section 4;

(b) do within such place anything necessary for the proper discharge of his or its duties under this Act; and

(c) exercise such other powers as may be prescribed.

Interest payable on delay in payment of cess.

8. If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two per cent. for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

Penalty for non-payment of cess within the specified time.

9. If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding the amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

Recovery of amount due under the Act.

10. Any amount due under this Act (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

Appeals.

11. (1) Any employer aggrieved by an order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

Penalty.

12. (1) Whoever, being under an obligation to furnish a return under this Act, furnishes any return knowing, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being liable to pay cess under this Act, wilfully or intentionally evades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

Offences by companies.

13. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority to whom or to which such returns shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 7;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section (1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Ord.
26 of 1996.

15. (1) The Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996, is hereby repealed.

Repeal and saving.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

The Bill is complementary to the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1996 proposed to be introduced and considered simultaneously. With a view to provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted by the State Governments under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995 (Ord. 14 of 1995), an Ordinance, namely, the Building and Other Construction Workers' Welfare Cess Ordinance, 1995 (Ord. 15 of 1995) was promulgated by the President on the 3rd November, 1995. The intention was to make over, after due appropriation by Parliament by law, the proceeds of the cess, to the State Building and Other Construction Workers' Welfare Boards and the cost of collection not exceeding one per cent. of the cess collected to the State Governments to whom it is proposed to delegate the authority to collect the cess. A Bill, namely, the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in Lok Sabha on the 1st December, 1995 to replace the said Ordinance by an Act of Parliament. Since the said Bill could not be taken up for consideration and passing in the Winter Session, 1995 and the Budget Session, 1996 of Lok Sabha, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 and the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 respectively were promulgated on the 5th January, 1996 and the 27th March, 1996 with a view to give continued effect to the legislative protection. On the dissolution of the Tenth Lok Sabha, the Building and Other Construction Workers' Welfare Cess Bill, 1995 stood lapsed. By virtue of article 123(2)(a) of the Constitution the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 promulgated on the 27th March, 1996 would have also ceased to operate with effect from the 4th July, 1996. In view of the urgency felt and as the Parliament was not in session, the President was pleased to promulgate the Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996 on 20th June, 1996 in order to give continued effect to the legislative protection envisaged in the earlier Ordinance.

2. The Bill seeks to replace the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 (Ord. 26 of 1996).

NEW DELHI;

The 2nd July, 1996.

M. ARUNACHALAM.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for the levy of a cess at such rate, not exceeding one per cent. of the cost of construction incurred by employers of the building and other construction workers, as the Central Government may, by notification in the Official Gazette, specify.

2. The proceeds of the above-mentioned cess will be paid into the Consolidated Fund of India. The Central Government may, if Parliament, by appropriation made by law in this behalf, so provides, pay to the various State Building and Other Construction Workers' Welfare Boards, from time to time, out of such proceeds (after deducting the cost of collection not exceeding one per cent. of the amount collected) such sums of money as it may think fit.

3. The collection of the above-mentioned cess will involve some expenditure from the Consolidated Fund of India. It is not possible at this stage to estimate the amount of such expenditure as that will depend upon various contingencies such as the rate at which the cess may be levied, etc. As only the balance of the proceeds, after deducting the cost of collection not exceeding one per cent. of such cess collected may be utilised for making payments to the various State Building and Other Construction Workers' Welfare Boards, there will, in effect, be no net outgo from the Consolidated Fund of India.

4. The expenditure on the collection of cess will be of a recurring nature and the Bill does not involve any other expenditure, whether of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 14 of the Bill seeks to empower the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. The various matters in respect of which rules may be made, have been detailed in sub-clause (2) of the said clause.

2. The matters in respect of which rules may be made under the proposed legislation are matters of procedure and administrative detail and it is very difficult to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 32 OF 1996***A Bill further to amend the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.***

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This Act may be called the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Act, 1996.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of
long title of
Act 46 of
1948.

2. In the long title to the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (hereinafter referred to as the principal Act), for the words "Family Pension Scheme", the words "Pension Scheme" shall be substituted.

Amendment of
section 2.

3. In section 2 of the principal Act,—

(a) clause (ee) shall be omitted;

(b) after clause (g), the following clauses shall be inserted, namely:—

'(h) "Pension Fund" means the Pension Fund established under sub-section (2) of section 3E;

(i) "Pension Scheme" means the Coal Mines Pension Scheme framed under sub-section (1) of section 3E;

(j) "superannuation", in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment.

4. In the principal Act, for the expressions "Family Pension", "Family Pension Fund", "Family Pension Scheme" and "Coal Mines Family Pension Scheme", wherever they occur, the expressions "Pension", "Pension Fund", "Pension Scheme" and "Coal Mines Pension Scheme" shall respectively be substituted.

Substitution of references to certain expressions by certain other expressions.

5. For section 3E of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 3E. Coal Mines Pension Scheme.

"3E. (1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Coal Mines Pension Scheme for the purpose of providing for—

(a) superannuation pension, retiring pension or permanent total disablement pension to the persons employed in any coal mine or class of coal mines to which this Act applies; and

(b) widow or widower pension, children pension or orphan pension and life assurance benefits, payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 3, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme,—

(a) such sums, not exceeding one-fourth, of the amount payable to the Fund under sub-section (1) of section 10D as the employer's contribution as well as the employee's contribution, as may be specified in the Pension Scheme;

(b) such sums as the Central Government may, after due appropriation made by Parliament by law in this behalf, specify;

(c) the net assets of the Family Pension Fund as existed immediately before the establishment of the Pension Fund; and

(d) any other contribution which may be made to the Pension Fund with the previous approval of the Central Government.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in, and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Board in such manner as may be specified in the Pension Scheme.

(5) Any Scheme framed under the provisions of sub-section (1) may provide for all or any of the matters specified in the Second Schedule."

6. For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. For the purposes of the Income-tax Act, 1961, the Fund shall be deemed to be a recognised Provident Fund within the meaning of Part A of the Fourth Schedule to that Act."

Substitution of new section for section 4. Fund to be recognised under Act 43 of 1961.

7. In section 10 of the principal Act, in sub-section (2B),—

Amendment of section 10.

(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

(b) for the word and figures "section 98", the word and figures "section 94" shall be substituted.

Amendment of section 11.

8. In section 11 of the principal Act, for the words and figures "section 230 of the Indian Companies Act, 1913", the words and figures "section 530 of the Companies Act, 1956" shall be substituted.

7 of 1913.
1 of 1956.

Substitution of new Schedule for the Second Schedule.

9. For the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

"THE SECOND SCHEDULE

[See section 3E(5)]

MATTERS TO BE PROVIDED FOR IN THE COAL MINES PENSION SCHEME

1. The employees or class of employees to whom the Coal Mines Pension Scheme shall apply and the time within which option to join that scheme shall be exercised by those employees to whom the said scheme does not apply.

2. The time within which the employees who are not members of the Family Pension Scheme under section 3E as it stood before the commencement of the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Act, 1996 (hereinafter, in this Schedule, referred to as the amending Act) shall opt for the Pension Scheme.

3. The portion of employer's contribution and employees' contribution to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

4. The Central Government's contribution and other contributions to the Fund which shall be credited to the Pension Fund and the manner in which it is credited.

5. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service under section 3E as it stood before the commencement of the amending Act.

6. The regulation of the period of service for which no contribution is received.

7. The manner in which employees' interest will be protected against default in payment of contribution by the employer.

8. The manner in which the accounts of the Pension Fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by the Central Government.

9. The form in which an employee shall furnish particulars about himself and the members of his family whenever required.

10. The forms, registers and records to be maintained in respect of employees required for the administration of the Pension Scheme.

11. The scale of pension and pensionary benefits and the conditions relating to grant of such benefits to the employees, the amount of life assurance payable under the Pension Scheme and the manner of such payment.

12. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose.

13. The manner in which the expenses incurred in connection with the administration of the Pension Scheme may be paid by the Central Government to the Board.

14. Nomination of persons for receiving pension and assurance amounts in the case of death of an employee.

15. Any other matter which is to be provided for in the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme."

Repeal and saving.

10. (1) The Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Third Ordinance, 1996 is hereby repealed.

Ord.
22 of 1996.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948) provides for the framing of a Provident Fund Scheme, a Family Pension Scheme, a Deposit-linked Insurance Scheme and a Bonus Scheme for persons employed in coal mines. The Act presently applies to about 948 units. As on 31st March, 1996 about 8.13 lakh coal workers were covered under the Act.

2. The Board of Trustees of the Coal Mines Provident Fund recommended to the Central Government for the framing of a suitable Pension Scheme providing wider benefits to the subscribers of the Coal Mines Provident Fund. It was, accordingly, proposed to amend the Act for the purpose of empowering the Central Government to frame a Pension Scheme, *inter alia*, for the following:—

(i) superannuation pension, retiring pension, permanent total disablement pension, widow or widower pension, children pension and orphan pension;

(ii) creation of a Pension Fund on the same pattern of contribution as the existing Family Pension Fund, supplemented by additional contributions agreed to voluntarily by the workers and the surplus available with existing Family Pension Fund;

(iii) transfer of all assets and liabilities of the existing Family Pension Fund to the proposed Pension Fund.

3. Considering the exigencies of the matter, an Ordinance, namely, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Ordinance, 1996 was promulgated by the President on the 5th January, 1996. For giving continued effect to the provisions of the said Ordinance, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Second Ordinance, 1996 was promulgated by the President on the 26th March, 1996 and in order to give continued effect to the provisions of the latter, the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Third Ordinance, 1996 was promulgated by the President on the 20th June, 1996.

4. The Bill seeks to replace the Coal Mines Provident Fund and Miscellaneous Provisions (Amendment) Third Ordinance, 1996.

NEW DELHI;
The 3rd July, 1996.

KANTI SINGH.

FINANCIAL MEMORANDUM

The Family Pension Fund constituted under sub-section (2) of section 3E of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 has an element of Central Government contribution. At present, the Central Government contributes at the rate of one and two-third per cent. of the emoluments of each employee. The Central Government is also bearing the entire cost of administration of the Family Pension Fund. It is proposed to bring in a new Pension Scheme with a new Pension Fund in place of the existing Family Pension Scheme and Family Pension Fund respectively by substituting the existing section 3E of the Act by a new section 3E. It is proposed to transfer the net assets of the existing Family Pension Fund to the corpus of the proposed Pension Fund. Clause (b) of sub-section (2) of the new section 3E proposed *vide* clause 5 of the Bill provides for the contribution of the Central Government. The Central Government may pay to the proposed Pension Fund such sums after due appropriation made by Parliament by law in this behalf. However, it is proposed that this amount would be at the existing level of contribution to the Family Pension Fund. The Central Government shall also bear the entire cost of administration of the proposed Pension Fund. It is estimated that a total annual recurring expenditure to the tune of Rs. 28.42 crores would be involved towards the Central Government's contribution to the Pension Fund and for meeting the cost of the administration of the Pension Fund.

2. There will be no additional financial liability, either recurring or non-recurring, from the Consolidated Fund of India for the purposes of the proposed Pension Scheme.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The new section 3E of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 proposed to be inserted *vide* clause 5 of the Bill, seeks to empower the Central Government to frame the Pension Scheme for the purpose of providing superannuation pension, retiring pension, permanent total disablement pension to the employees of coal mines and also widow or widower pension, children pension or orphan pension payable to the beneficiaries of such employees covered under the Act. Under the Pension Scheme which will be framed by the Central Government, the various matters which are to be provided therein are enumerated in the new Second Schedule proposed to be inserted *vide* clause 9 of the Bill.

2. The provisions to be made in the Pension Scheme under the Act will contain matters of detail and day-to-day administration of the Pension Fund, the various kinds of pension payable under the Scheme, contributions to be received, mode of disbursement of pension to be made and other like matters. It is very difficult to provide for these matters in the Bill itself.

3. The delegation of legislative power is, thus, of a normal character.

S. GOPALAN,
Secretary-General.